

RSA No. 5816 of 2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No. 5816 of 2014

Date of Decision: August 18, 2015

Dharam Pal alias Pala & others

...Appellants

Versus

Dalip Chand alias Deepa alias Didar Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajesh Goel, Advocate
for the appellants.

AUGUSTINE GEORGE MASIH, J. (Oral):

The appellant-plaintiffs filed a suit for mandatory injunction directing the respondent-defendants to close the door opened in the suit property i.e. private street known as Gali Bairagiran and for removing/demolishing the over-hanging Chhajja over the said private street as shown in the attached site plan and restoring the possession of the suit property as it was prior to its construction, with a decree for permanent injunction restraining the respondent-defendants from further opening any doors, windows, nali (drain) and patnala (rain water pipe) in and towards the suit property.

As per the assertion of the appellant-plaintiffs, the street in question is a private street which leads to the houses of the appellant-plaintiffs and ends there. The said street was constructed by the appellant-plaintiffs at their own expenses and they have been

using the same peacefully without any interference or hindrance continuously. The respondent-defendants have their own Rasta towards the Southern Side, the gate and door of their houses are towards the same side and they have no concern with the street in question. The respondent-defendants have illegally and forcibly opened a door and have raised illegal construction of Chhajja over a part of the street in the month of April, 2006. Complaints to the authorities did not yield any result and in fact, threats were extended to the appellant-plaintiffs which forced them to file the present suit.

The stand, on the other hand, of the respondent-defendants is that it was not a private street but a public street which is being used by one and all being a thoroughfare. Construction of the street at the expenses of the appellant-plaintiffs has been denied and it is asserted that they did not have any right to use the street. Since, it is a public street, they have rightly opened the gate on this side and the construction of the Chhajja etc. is legal and authorized one. No objection was raised at the time of construction of the same.

On the basis of evidence led by the parties, both the Courts below have returned concurrent findings that the street in question is not a private street, especially in the light of the statement of PW-1-Krishan Pal, Draftsman, who had prepared the site plan EX.P-1 who had stated that the main gate of the house of the respondent-defendants opens in the Phirni of the village towards the Southern side and even the door of Baithak constructed near the

gate also open towards the Phirni. He has also asserted that a door has been opened in the street in dispute and there is a Chhajja constructed over the said street. He has stated in his cross-examination that it is not exclusively used by Baraigies whose houses are constructed but as per site plan Ex.P-1, it is clear that there is no house of any Bairagi at portion 'A to C'. PW-2 Dharam Pal alias Pala, who is appellant-plaintiff No.1, in his cross-examination, has stated that the disputed street opened in the North side as well as on the South side and it connects with the main street on both the sides which clearly established that the disputed street is a public street. The conclusion drawn by the Courts below on the basis of evidence on record that it was not a private street especially when nothing has been produced on record to show that it was constructed by the appellant-plaintiffs or that it was on the land owned by them, cannot be faulted with.

Counsel for the appellant has asserted that during the pendency of the appeal before the Lower Appellate Court, application filed by the appellant-plaintiffs under Order 41 Rule 27 of the Civil Procedure Code (for short 'the CPC') for production of additional evidence, whereby, an information under the Right to Information Act that the street in question was not the ownership of Gram Panchayat as per the certificate given by the Gram Panchayat, Mathana, which stands dismissed, should have been allowed. Reliance has been placed on the judgment passed by the Supreme Court in **North**

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Eastern Railway Administration, Gorakhpur Versus Bhagwan Das (D) by LRs, 2008 (3) RCR (Civil) 165, to contend that the application has been wrongly dismissed by the Lower Appellate Court.

This contention of the counsel for the appellant-plaintiffs cannot be accepted in the light of the reasons assigned by the Lower Appellate Court which are in accordance with the requirements of provisions under Order 41 Rule 27 of the CPC as the counsel could not dispute the fact that the appellant-plaintiffs had all the opportunity to produce the record of the Gram Panchayat in the Civil Court. Further, the positive assertions of the appellant-plaintiffs were that it was a private street which had been constructed by them which fact could have been independently proved by them by producing relevant record at the appropriate stage. Due diligence has not been exercised by the appellant-plaintiffs and the lacunae and gaps in the evidence could not be permitted to be filled-up at a belated stage of appeal. Dismissal of the application cannot be faulted with.

In the entire plaint, it has not been alleged by the appellant-plaintiffs that they are owners of the street in question. What has been stated by the appellant-plaintiffs is that the street in question is a private street which was constructed by them at their own expenses and they are using it for the said purpose. They had failed to produce any evidence on record either to show that they were owners of the street in question or that they had incurred

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expenses for construction of the same. In any case, even if some repair work is carried by them (although there is no evidence to that effect) they do not become the owners of the street in question. The appellant-plaintiffs have not examined either the Sarpanch or the Member Panch to prove that the street belongs to them. When the appellant-plaintiffs have failed to prove that it was a private street, rather the statements of PW-1 and PW-2 referred to above, show it to be a public street which is admission on the part of the appellant-plaintiff No.1 Dharam Pal and their witness, the injunction as has been prayed by them, could not have been granted.

The judgment of this Court in **Om Parkash Versus Chamel Singh, 2005 (2) RCR (Civil) 723** on which reliance has been placed by the counsel, would not be applicable to the case in hands as it was a case where the doors, windows, nali (drain) and patnala (rain water pipe) were constructed on the land owned by the appellant-plaintiffs which is not the case here.

Both the Courts below have returned concurrent findings after properly appreciating the evidence and the same cannot be interfered with as there is no perversity or illegality in the same.

No substantial question of law is involved in the present appeal. Therefore, finding no merit in the present appeal, the same stands dismissed.

August 18, 2015

**(AUGUSTINE GEORGE MASIH)
JUDGE**